

REMARKS

Claims 1, 6, 7, 9, 10, 17, 18, 19, 30 and 38 are amended herein. Claims 2 and 31-32 have been canceled. Claims 1, 3-30 and 33-42 are pending. No new matter has been added as a result of these amendments.

CLAIM REJECTIONS - 35 U.S.C. §102(b)

Claims 1, 3, 4, 6-19, 26-28, 30, 33, 35 and 37-39 are rejected under 35 U.S.C. § 102(b) as being anticipated by Hunt et al. (U.S. Patent No. 5,835,716). Applicants have reviewed the above cited reference and respectfully submit that the embodiments of the present invention as recited in Claims 1, 3, 4, 6-19, 26-28, 30, 33, 35 and 37-39 are not anticipated by for at least the following rationale.

i. Claim 1

Independent Claim 1, as amended, recites the features:

An information exchange system comprising:
a link to a communication network coupled to a plurality of partner databases storing information related to carrier availability;
a database coupled to said link, said database storing a demand entry and a plurality of carrier entries that arrive to said database through said communication network, said demand entry comprising shipping demand specifications and said plurality of carrier entries comprising carrier availability information; and
a logic unit coupled to said database, said logic unit receiving said demand entry, selecting one of said plurality of carrier entries based on an attribute of said demand entry, and automatically booking said selected carrier entry in response to said demand entry.

"[A]nticipation requires the presence in a single prior art reference disclosure of *each and every element* of the claimed invention, arranged as in the

claim" *Lindemann Maschinefabrik GmbH v. American Hoist & Derrick Co.*,
221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added).

MPEP §2131 provides:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ... "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

Applicants respectfully submit that Hunt fails to disclose each and every element of Claim 1, arranged as in the claim. For instance, Examiner has submitted:

Hunt discloses the database is for storing data for the carrier space listed or requested. The examiner considers the carrier space listed to be the carrier entry and the carrier space requested to be the demand entry

See page 2, paragraph 3 of the Office Action of January 29, 2007, citing Hunt, column 4, lines 27-44. However, Applicants understand Hunt to teach storing a requested route in a request database and storing an available carrier capacity and a matching route selection in a transportation database. Applicants do not understand Hunt to anticipate a database storing a demand entry *and* a plurality of carrier entries.

The foregoing notwithstanding, Applicants respectfully submit that Hunt does not anticipate features of the claimed invention comprising a logic unit selecting one of said plurality of carrier entries based on an attribute of said

demand entry and automatically booking said selected carrier entry in response to said demand entry.

In contrast, Applicants understand Hunt to teach a system that compares available carrier capacity with a requested route and determines whether or not a match exists. Applicants further understand Hunt to teach that after the disclosed system determines whether or not a match exists, a system operator selects an appropriate matched entry which must then be confirmed. Thus, Applicants do not understand Hunt to anticipate a logic unit “*selecting one of a plurality of said carrier entries* based on an attribute of said demand entry, and *automatically booking* said selected carrier entry in response to said demand entry” (emphasis added).

For at least the foregoing rationale, Applicants respectfully submit that Claim 1 is not anticipated by Hunt under 35 U.S.C. §102(b). As such, allowance of Claim 1 is respectfully requested.

With respect to Claims 3-29, Applicants respectfully point out that Claims 3-29 depend from allowable amended independent Claim 1, and recite further features of the present claimed invention. Therefore, Applicants respectfully submit that Claims 3-29 overcome the rejections under 35 U.S.C. §102(b), and that these claims are thus in a condition for allowance as being dependent on an allowable base claim. As such, allowance of Claims 3-29 is respectfully

requested.

ii. Claim 30

Independent Claim 30, as amended, recites:

A method comprising:
receiving a demand entry from a first user, said demand entry comprising shipping demand specifications;
receiving a carrier entry from a second user, said carrier entry comprising carrier availability information;
storing said received demand entry and said received carrier entry in a database comprising a plurality of carrier entries;
selecting one of said plurality of carrier entries based on an attribute of said demand entry; and
automatically booking said selected carrier entry in response to said demand entry.

Applicants respectfully submit that Hunt fails to disclose each and every element of Claim 30, arranged as in the claim. Similarly to the aforementioned rationale regarding Claim 30, Applicants do not understand Hunt to anticipate a database storing a demand entry *and* a plurality of carrier entries. Further, Applicants do not understand Hunt to anticipate receiving a demand entry, *selecting one of a plurality of carrier entries* based on an attribute of the demand entry, and *automatically booking* the selected carrier entry in response to the demand entry.

For at least the foregoing rationale, Applicants respectfully submit that Claim 30 is not anticipated by Hunt under 35 U.S.C. §102(b). As such, allowance of Claim 30 is respectfully requested.

With respect to Claims 33-42, Applicants respectfully point out that Claims 33-42 depend from allowable amended independent Claim 30, and recite further features of the present claimed invention. Therefore, Applicants respectfully submit that Claims 33-42 overcome the rejections under 35 U.S.C. §102(b), and that these claims are thus in a condition for allowance as being dependent on an allowable base claim. As such, allowance of Claims 33-42 is respectfully requested.

CLAIM REJECTIONS - 35 U.S.C. §103(a)

i. Claims 5 and 24

Claims 5 and 24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunt et al. (U.S. Patent No. 5,835,716). Applicants have reviewed the above cited reference and respectfully submit that the embodiments of the present invention as recited in Claims 5 and 24 are patentable over the cited reference for at least the following rationale.

a. Missing Claim Features

To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). (MPEP 2143.03).

Similarly, MPEP §2143 provides:

To establish a prima facie case of obviousness ... the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Claims 5 and 24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunt. Claims 5 and 24 depend from Claim 1, and thus contain by reference every feature of Claim 1, as amended. Thus, in so much as Claims 5 and 24 depend from Claim 1, Applicants respectfully submit that Claims 5 and 24 are patentable over Hunt under 35 U.S.C. § 103(a) for at least the following rationale.

As stated above, Hunt does not teach each and every element of Independent Claim 1, as amended. For instance, Applicants understand Hunt not to teach or suggest a database storing a demand entry *and* a plurality of carrier entries. Further, Applicants understand Hunt not to teach or suggest a logic unit receiving a demand entry, *selecting one of a plurality of carrier entries* based on an attribute of the demand entry, and *automatically booking* the selected carrier entry in response to the demand entry.

In view of the aforementioned rationale, Applicants respectfully submit that Claim 1, as amended, is allowable. With respect to Claims 5 and 24, Applicants respectfully point out that Claims 5 and 24 depend from allowable amended independent Claim 1, and recite further features of the claimed invention. Therefore, Applicants respectfully submit that Claims 5 and 24 overcome the

rejections under 35 U.S.C. § 103(a), and that these claims are thus in a condition for allowance as being dependent on an allowable base claim. As such, allowance of Claims 5 and 24 is respectfully requested.

b. Unsupported Official Notice

The foregoing notwithstanding, Appellants respectfully submit that the Examiner has provided inadequate support of a finding of Official Notice. Examiner takes Official Notice that the use of defining a group who has unrestricted access to the system is old and well known in the art. Appellants respectfully submit that the claimed embodiment of Claim 5 (a logic unit allows a user to define a subgroup within the exchange system and limits unrestricted access of at least a portion of the database only to members of the subgroup), and similarly the claimed embodiment of Claim 34 (allowing a user to define a subgroup of shippers and carriers and granting unrestricted access to the database only to the subgroup), are not considered to be common knowledge or well-known in the art, as asserted by the Examiner.

The “assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support” (MPEP 2144.03(A); *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001)). In particular, “[i]f such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her

conclusion of common knowledge" (MPEP 2144.03(B); see *In re Soli*, 317 F.2d 941, 946, 37 USPQ 797, 801 (CCPA 1963); see also *In re Chevenard*, 139 F.2d 711, 713, 60 USPQ 239, 241 (CCPA 1943)).

Appellants respectfully submit that the basis for Official Notice as relied on by the Examiner is not set forth explicitly, as required. Appellants respectfully submit that the Examiner has not stated why the teachings providing a threshold value are common knowledge.

Furthermore, the Examiner has not stated how such teachings relate to the claims. Indeed, Applicants understand the Examiner to have mischaracterized the claimed invention by stating:

it would have been old to one having ordinary skill in the art at the time the invention was made, to have the system of Hunt, allow a subgroup of users be assigned administrative rights, to have unrestricted access to the system, in order for the subgroup of people to have complete control over the data, for configuration purposes, and for problem solving purposes.

See page 7, paragraph 27 of the Office Action of January 29, 2007. Appellants respectfully assert that the Examiner has taken Official Notice without providing a clear and unmistakable technical line of reasoning, as required.

Appellants respectfully assert that the process of allowing a user to define a subgroup and granting unrestricted access to the database (or a portion thereof) only to the subgroup is not common knowledge. "It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the

record as the principal evidence upon which a rejection is based” (emphasis added; MPEP 2144.03(E); See *In re Zurko*, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); *In re Ahlert*, 424 F.2d 1088, 1092, 165 USPQ 418, 421 (CCPA 1970)).

Accordingly, Appellants respectfully request that the Examiner provide adequate evidence in the form of an affidavit in support of the finding of Official Notice, in accordance with 37 CFR § 1.104(d)(2).

ii. Claims 20-25, 29, 36 and 40-42

Claims 20-25, 29, 36 and 40-42 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunt et al. (U.S. Patent No. 5,835,716) in view of Nel (U.S. Patent Application No. 2003/0036935). Applicants have reviewed the above cited references and respectfully submit that the embodiments of the present invention as recited in Claims 20-25, 29, 36 and 40-42 are patentable over the cited references for at least the following rationale.

Claims 20-25, 29 depend from Claim 1, and thus contain by reference every feature of Claim 1, as amended. Similarly, Claims 36 and 40-42 depend from Claim 30, and thus contain by reference every feature of Claim 30, as amended. Thus, in so much as Claims 20-25, 29 depend from Claim 1, and Claims 36 and 40-42 depend from Claim 30, Applicants respectfully submit that

Claims 20-25, 29, 36 and 40-42 are patentable over Hunt in view of Nel under 35 U.S.C. § 103(a) for at least the following rationale.

According to the Examiner, and as stated on page 7, paragraph 29 in the Office Action of January 29, 2007, "Nel discloses the use of an allocating system for freight haulage jobs, which has a fleet monitoring system which uses GPS to locate vehicles." However, the combination of Hunt and Nel fails to teach or suggest every feature of either Claims 1 or 30, as amended.

Applicants have reviewed Hunt and do not understand Hunt to teach or suggest a database storing a demand entry *and* a plurality of carrier entries. Further, Applicants do not understand Hunt to teach or disclose *selecting one of a plurality of said carrier entries* based on an attribute of said demand entry, and *automatically booking* said selected carrier entry in response to said demand entry.

Moreover, Applicants have reviewed Nel and understand the combination of Hunt and Nel not to teach or suggest these claim features because Nel does not overcome the shortcomings of Hunt. For example, Applicant understands Nel to disclose or suggest the use of a database only when referencing Hunt in paragraph [0005].

Applicants understand Nel not to teach or suggest a database storing a

demand entry *and* a plurality of carrier entries. Further, Applicants understand Nel not to teach or suggest receiving a demand entry, *selecting one of a plurality of carrier entries* based on an attribute of the demand entry, and *automatically booking* the selected carrier entry in response to the demand entry.

With respect to Claims 20-25 and 29, Applicants respectfully point out that Claims 20-25 and 29 depend from allowable amended independent Claim 1, and recite further features of the claimed invention. With respect to Claims 36 and 40-42, Applicants respectfully point out that Claims 36 and 40-42 depend from allowable amended independent Claim 30, and recite further features of the claimed invention. Therefore, Applicants respectfully submit that Claims 20-25, 29, 36 and 40-42 overcome the rejections under 35 U.S.C. § 103(a), and that each of these claims are thus in a condition for allowance as being dependent on an allowable base claim. As such, allowance of Claims 20-25, 29, 36 and 40-42 is respectfully requested.

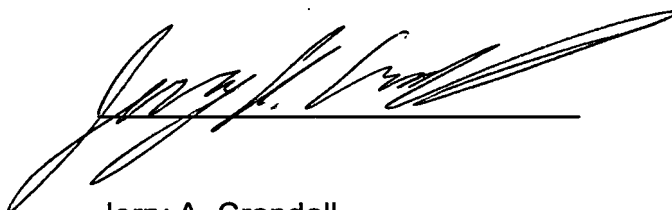
CONCLUSION

In light of the above listed remarks, reconsideration of the rejected claims is requested. Based on the amendments and arguments presented above, it is respectfully submitted that Claims 1, 3-30 and 33-42 overcome the rejections of record. Therefore, allowance of Claims 1, 3-30 and 33-42 is respectfully solicited.

Should the Examiner have a question regarding the instant amendment and response, the Applicants invite the Examiner to contact the Applicants' undersigned representative at the below listed telephone number.

Respectfully submitted,
WAGNER BLECHER LLP

Date: 06/29/07

A handwritten signature in black ink, appearing to read "Jerry A. Crandall", is written over a horizontal line.

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